

Internal Revenue Service

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PLR-109766-06

Date: September 28, 2006

Legend

X =

Y =

Z =

A =

B =

State =

D1 =

D2 =

Y1 =

Dear

This responds to a letter dated January 27, 2006, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election pursuant to § 301.7701-3(c) to be classified as an association taxable as a corporation for federal tax purposes, effective D2.

FACTS

Y is the common parent of an affiliated group of corporations that files a consolidated return for U.S. federal income tax purposes (the Y Group). The Y Group included Z, A, and B. Y is the sole owner of Z and A, and A is the sole owner of B. X is a State limited partnership, formed on D1, in which Y owns a 99 percent limited partner interest and Z owns a 1 percent general partner interest. X was initially treated as a partnership for U.S. federal income tax purposes.

Pursuant to a plan of reorganization adopted in early Y1, the following transactions were undertaken to transfer the assets of B to X. First, B distributed all of its assets to A in a complete liquidation. Second, A distributed the assets of B to Y. The parties represent that the gain on this distribution of appreciated property is deferred pursuant to §§ 1.1502-13(f)(2)(ii) and (iii) of the Income Tax Regulations and taken into account under the consolidated return matching and acceleration rules of §§ 1.1502-13(c) and (d). Third, Y contributed 1 percent of the assets of B to Z in a transaction that the parties represent § 351 of the Internal Revenue Code and § 1.1502-13(j) apply. Finally, Y contributed the remaining 99 percent of the assets of B and Z contributed its 1 percent of the assets of B to X. X represents that as of D2, the date prior to the final step in the reorganization plan, X was eligible to make an election under § 301.7701-3(c), to be classified as an association taxable as a corporation for U.S. federal income tax purposes. However, the Form 8832, Entity Classification Election, inadvertently was not timely filed.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under §§ 301.7701-2(b)(1), (3)-(8) (an eligible entity), it may elect its classification for federal tax purposes. Section 301.7701-3(b)(1)(i) provides that, unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more members.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing a Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months

except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term regulatory election as including an election with a deadline prescribed by a regulation published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of sixty (60) days from the date of this letter to elect to be classified as an association for Federal income tax purposes, effective D2. The election should be made by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes